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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/052,325	03/31/1998	JOHN E. STOCKENBERG	EMC-97-137	9015

7590 04/28/2004

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EXAMINER
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COLBERT, ELLA

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 04/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/052,325

Applicant(s)

STOCKENBERG ET AL.

Examiner

Ella Colbert

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MW

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Claims 1-20 are pending. Claims 1, 6, 11, and 15 have been amended and claims 17-20 have been added in this communication filed 02/04/04 entered as Amendment E, paper no. 23.
2. The Drawings filed 02/04/04 have been considered but objected to. See the reasons here below.

### ***Drawings***

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "54" in figure 3 has been used to designate both "(EDM) SSLConnect" in the drawing figure 3 and referred to as "STP or SSL Connect in the Specification and element 60 is referred to as "storage sockets" in the drawing figure and referred to as "socket communication mechanism" in the Specification. In drawing figure 4, element 94 is referred to as "socket (2) (W.K.P.) and in the Specification element 94 is referred to as "socket opened". The Applicants' are respectfully reminded that the elements in the drawing figures must be labeled in agreement with the referenced element name in the Specification in order to avoid confusion and to be consistent. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

4. Claim 1 is objected to because of the following informalities: Claim 1, line 16 reads "... wherein, in response to determining that a ". This claim limitation would be

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better read "... , in response to determining that a". The "wherein, in" is redundant.

Appropriate correction is required.

***Election/Restrictions***

5. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-5 and 17-20, drawn to a system for performing a backup and restore operation, classified in class 711, subclass 162.
- II. Claims 6-13, 15, and 16, drawn to a method for establishing a connection and assisting with backup and restore operations, classified in class 709, subclass 223.

6. Inventions Group I and Group II are related as combination and subcombination.

Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because Group I combination has separate utility such as a first communication mechanism and a second communication mechanism residing on each of the first and second computers. Group II the subcombination has separate utility such as establishing a first connection over a network and establishing in parallel with establishing a first connection and a second connection through a data storage system.

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7. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

8. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

9. Applicants are advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

### ***Inquiries***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 703-308-7064. The examiner can normally be reached on Monday-Thursday from 6:30 am -5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1038. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



E. Colbert

April 26, 2004